IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRIMINAL APPEAL NO.773 SB OF 1995

DATE OF DECISION: April 02, 2007

Rambir Singh and others

.....Appellants

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. P.S.Khurana, Advocate,
for the appellants.

Mr. Dilbag Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

The appellants have been convicted for an offence under Section 308/34 IPC and sentenced to suffer RI for two and a half years with fine of Rs.2000/- each and in default of payment of fine to undergo RI for three months.

The complainant and victim were residents of District Panchkula and working as labourers at a stone crusher. On 18.6.1994 at about 3 P.M., they

were working at the stone-crusher while brother of complainant, Pardeshi, was taking rest on a cot in front of the hut. Complainant Mange Ram noticed Rambir alongwith Chander Pal, Vijender Singh and Jai Pal approaching towards them. Appellant Rambir was armed with a Bamboo stick. On reaching near the place where the complainant was working, Rambir raised Lalkara and said that he would teach a lesson to Pardeshi for teasing his sister. Before the complainant and his family could rush to save Pardeshi, appellants Chander Pal, Vijender Singh and Jai Pal caught hold him and Rambir gave a stick blow on his fore-head near left eye. Pardeshi fell down and became unconscious. The appellants escaped from the scene. Injured Pardeshi was shifted to General Hospital, Sector 6, Panchkula, and matter was reported to the police at Chandimandir, leading to registration of an FIR on a statement made by Mange Ram, complainant. After completion of investigation, all the appellants were challaned under Section 308/34 IPC and after trial sentenced to suffer RI, as already noticed.

In support of its case, prosecution examined 14 witnesses, which included the complainant as well as injured Pardeshi. The prosecution case also received support from the doctors, who attended injured Pardeshi. The appellants, when confronted with the incriminating circumstances and the evidence, pleaded innocence and stated that they were falsely implicated. The trial Court, having regard to the nature of offence, found all the appellants guilty of the charge.

Counsel for the appellants made a feeble attempt to make submissions on merits. He first contended that complainant

Mange Ram was not able to give the names of the accused-appellants and hence, it would not be safe to maintain the conviction. He also submitted that incident took place around 3.00 P.M. whereas the injured was taken to hospital late in evening. From this, the counsel sought to contend that possibility of injury due to fall and not due to any act on the part of the appellants may be indicated. Both the submissions made on behalf of the appellants are without merit. The prosecution case is duly supported by the evidence of the injured/victim and his brother and others, who were eye witnesses to the incident. The complainant has given clear evidence, identifying the appellants as the accused, who had attacked his brother, Pardeshi. He has specifically identified Rambir as the one who had used stick on the fore-head of injured Pardeshi. His statement, while under cross-examination, that he did not know the names of the accused-appellants, is of no significance when he had positively identified all the accused, who had caught hold Pardeshi and one who had given him injury. Merely because he did not know their names would not mean that his evidence is to be discarded. The contention of counsel for the appellants that the victim might have suffered injury because of a fall is noticed to be rejected. The evidence clearly reveals that Rambir had first hit the victim, giving injury on his fore-head because of which he fell down and thereafter he was seen bleeding. Pardeshi had also become unconscious and was taken to hospital. In this background, it is not possible to urge that Pardeshi had suffered injury because of a fall. The motive on the part of Rambir to hit Pardeshi is clearly made out. While hitting Pardeshi, appellant Rambir stated that he had teased his sister. No

case for interference in the conviction, as such, is made out.

Faced with this situation, learned counsel for the appellants pleaded for leniency and mercy on the ground that this is an old case of the year 1994 and the appellants were convicted since 1995. He accordingly pleads that at this belated stage, sentence would not serve any purpose and so the appellants be released on probation. In support of his submission, the counsel has relied upon ***Rajinder Vs. State of Haryana,*** 2004 (4) RCR (Criminal) 910, ***Virender Kumar Vs. State of Haryana,*** 2004 (2) RCR (Criminal) 775 and Full Bench decision of this Court in ***Joginder Singh Vs. The State of Punjab,*** 1980 C.L.R. 196, where such a course was directed.

This is a case where the FIR was registered on 18.6.1994. The appellants were convicted on 1.12.1995. The present appeal is pending since January 1996. Thus, the appellants, had suffered the consequences of this prosecution and trial for almost 13 years. The conviction of the appellants is under Section 308 IPC and the fight was over a minor incident. Three of the appellants were alleged to have just caught hold of the injured and injury is attributed to only one appellant, who also was not alleged to have any intention to cause any serious harm to the victim.

Taking all these aspects into consideration, I am of the view that the submission made by the counsel for the appellants would need acceptance. Thus, I am inclined to direct that the appellants be released on probation for a good conduct instead of sentencing them and they be directed to enter into a bond with one surety to appear and receive the sentence when called upon during

the period of two years for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Ambala, within one month of this order.

The present appeal is accordingly disposed of.

April 02, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**